U.S. DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, vs. STEVE GAW, ROBERT M. CLAYTON, III, AT&T COMMUNICATIONS OF THE SOUTHWEST, INC., SBC LONG DISTANCE, LLC, SBC ADVANCED SOLUTIONS, INC., TCG ST. LOUIS HOLDINGS, INC d/b/a TCG ST. LOUIS SOUTHWESTERN BELL TELEPHONE, L.P., and TCG KANSAS CITY, INC., Defendants.	)	Case No. 4:06CV1132 CEJ

AT&T'S ANSWER

COMES NOW AT&T[1] and answers Plaintiff's Complaint as follows:

1. AT&T admits that the United States seeks to prevent the disclosure of allegedly highly confidential and sensitive government information that the defendant officers of the Missouri Public Service Commission have sought to obtain from AT&T, that compliance with the subpoenas issued by those officers would place AT&T in the position of having to confirm or deny the existence of information, and that compliance with the subpoenas would require AT&T to disclose details. AT&T is without knowledge or information sufficient to form a belief as to the truth of falsity of whether confirming or denying the existence of such information would cause exceptionally grave harm to national security, but admits that the United States has

[1] "AT&T" refers collectively to AT&T Communications of the Southwest, Inc., SBC Long Distance, LLC, SBC Advanced Solutions, Inc., TCG St. Louis Holdings, Inc., d/b/a TCG St. Louis, Southwestern Bell Telephone, L.P., and TCG Kansas City, Inc., except where allegations are directed towards a particular AT&T entity, in which case "AT&T" refers to that entity.

informed it that such harm will result from disclosure. AT&T is also without information sufficient to form a belief as to whether the defendant officers have failed to obtain authorization for their actions from the United States, but admits that on July 11, 2006, the General Counsel for the Office of the Director of National Intelligence, Benjamin A. Powell, sent it a letter indicating that no such authorization had been solicited or received. The remaining allegations in paragraph 1 amount to legal conclusions to which no answer is required.

2. AT&T states that the allegations in paragraph 2 amount to legal conclusions to which no answer is required.

3. AT&T states that the allegations in paragraph 3 amount to legal conclusions to which no answer is required.

4. AT&T admits the allegations contained in paragraph 4.

5. AT&T admits the allegations contained in paragraph 5.

6. AT&T admits the allegations contained in paragraph 6.

7. AT&T denies that Defendant Southwestern Bell Telephone L.P. is a corporation incorporated in the state of Texas. Rather, Southwestern Bell Telephone L.P. is a limited partnership organized in the state of Texas. AT&T admits the remaining allegations contained in paragraph 7.

8. AT&T admits the allegations contained in paragraph 8.

9. AT&T admits the allegations contained in paragraph 9.

10. AT&T admits the allegations contained in paragraph 10.

11. AT&T admits the allegations contained in paragraph 11.[2]

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[2] AT&T assumes by way of its answer to paragraph 11 that Plaintiff intended to allege that TCG St. Louis Holdings, Inc. maintains offices in St. Louis County, rather than in St. County.

12. AT&T denies that Defendant TCG Kansas City, Inc. has no offices in the State of Missouri. AT&T admits the remaining allegations contained in paragraph 12.

13. AT&T admits the allegations contained in paragraph 13.

Statement of the Claim

14. AT&T states that the allegations in paragraph 14 amount to legal conclusions to which no answer is required.

15. AT&T states that the allegations contained in paragraph 15 amount to legal conclusions to which no answer is required.

16. The best evidence of what Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 states is the statute itself. The remaining allegations of paragraph 16 amount to legal conclusions to which no answer is required.

17. The best evidence of what 18 U.S.C. § 798 states is the statute itself. The remaining allegations of paragraph 17 amount to legal conclusions to which no answer is required.

18. The best evidence of what 50 U.S.C. § 402 note states is the note itself. The remaining allegations of paragraph 18 amount to legal conclusions to which no answer is required.

19. AT&T states that the allegations of paragraph 19 amount to legal conclusions to which no answer is required.

20. The best evidence of what Executive Order No. 12958, as amended by Executive Order No. 13292, states is the order itself. The remaining allegations of paragraph 20 amount to legal conclusions to which no answer is required.

21. The best evidence of what Executive Order No. 12968 states is the order itself. The remaining allegations of paragraph 21 amount to legal conclusions to which no answer is required.

22. AT&T states that the allegations in paragraph 22 amount to legal conclusions to which no answer is required.

23. AT&T states that the allegations in paragraph 23 amount to legal conclusions to which no answer is required.

24. The best evidence of what the USA Today article published on May 11, 2006, states is the article itself. AT&T further avers that the best evidence of what the Unclassified Declaration of Keith B. Alexander states is the declaration itself. AT&T admits the remaining allegations in paragraph 24.

25. AT&T admits the allegations in paragraph 25.

26. AT&T admits the allegations in paragraph 26.

27. AT&T admits that at the time this lawsuit was filed, the Judicial Panel on Multidistrict Litigation ("JPML") was considering a motion to transfer the cases referred to in paragraphs 25 and 26 to a single district for pretrial proceedings. AT&T further states that the on August 9, 2006, subsequent to the filing of the Government's Complaint, the JPML granted the motion to transfer.

28. AT&T admits that the Director of the National Security Agency, Lieutenant General Keith B. Alexander and the Director of National Intelligence, John D. Negroponte have asserted the state secrets privilege in both the *Hepting* and *Terkel* cases. AT&T further admits that General Alexander has also invoked the NSA's statutory privilege. AT&T states that the

remaining allegations in paragraph 28 amount to legal conclusions to which no answer is required.

29. The best evidence of what the subpoenas at issue in this case request is the subpoenas themselves. AT&T further states that the best evidence of what the allegations in *Terkel* involve is a review of the complaints filed in that case. AT&T admits the remaining allegations in paragraph 29.

30. The best evidence of what Director Negroponte's and General Alexander's affidavits in *Terkel* declare are the affidavits themselves. AT&T further avers that the statements made in these affidavits and in paragraph 30 amount to either legal conclusions to which no answer is required or factual statements to which AT&T lacks information sufficient to form a belief as to their truth or falsity.

31. The best evidence of what Director Negroponte's and General Alexander's invocations of privilege in *Terkel* encompass is the affidavits asserting the privilege. AT&T admits that the privilege assertions in *Terkel* encompass the same subject matter co-defendants Steve Gaw and Robert M. Clayton, III seek from AT&T here.

32. The best evidence of the testimony and materials the subpoenas seek are the subpoenas themselves. AT&T admits the remaining allegations in paragraph 32.

33. The best evidence of what RSMo. §§ 386.320 and 386.420 pronounce are the statutes themselves. AT&T further states that the best evidence of what statutes the subpoenas purport to be issued pursuant to are the subpoenas themselves. AT&T admits the remaining allegations in paragraph 33.

34. AT&T admits that the subpoenas demanded AT&T's response on or before July 12, 2006. AT&T states that the best evidence of what the Powell letter advised is the letter itself.

Subject to this, AT&T admits that on July 11, 2006, the General Counsel for the Office of the Director of National Intelligence, Benjamin A. Powell, advised it that complying with the subpoenas would harm national security and be inconsistent with federal law. The remaining allegations of paragraph 34 amount to legal conclusions to which no answer is required.

35. AT&T admits the allegations contained in paragraph 35.

36. AT&T states that the allegations in paragraph 36 amount to legal conclusions to which no answer is required.

37. AT&T states that the allegations in paragraph 37 amount to either legal conclusions to which no answer is necessary or factual statements to which it is without information sufficient to form a belief as to their truth or falsity, but admits that on July 11, 2006, the General Counsel for the Office of the Director of National Intelligence, Benjamin A. Powell, sent it a letter indicating that no such access has been granted.

38. AT&T states that the allegations in paragraph 38 amount to either legal conclusions to which no answer is necessary or factual statements to which it is without information sufficient to form a belief as to their truth or falsity, but admits that on July 11, 2006, the General Counsel for the Office of the Director of National Intelligence, Benjamin A. Powell, sent it a letter indicating that no such authorization had been given.

39. AT&T admits the allegations contained in paragraph 39.

40. AT&T admits the allegations contained in paragraph 40.

41. AT&T admits that it is unable to confirm or deny its involvement, if any, in intelligence activities undertaken by the United States, and cannot provide a substantive response to the subpoenas, in light of the admonition by the federal government, in a letter to AT&T dated May 11, 2006, from Benjamin A. Powell, the General Counsel for the Office of the Director of

National Intelligence, that compliance with the subpoenas would be inconsistent with, and preempted by, federal law. The remaining allegations in paragraph 41 amount to legal conclusions to which no answer is required.

42. AT&T states that the allegations in paragraph 42 amount to legal conclusions to which no answer is required.

Count I

43. AT&T incorporates by reference its answers to paragraphs 1 through 42 of this pleading, as if fully set forth herein.[3]

44. AT&T states that the allegations in paragraph 44 amount to legal conclusions to which no answer is required.

45. AT&T states that the allegations in paragraph 45 amount to legal conclusions to which no answer is required.

Count II

46. AT&T incorporates by reference its answers to paragraphs 1 through 45 of this pleading, as if fully set forth herein.[4]

47. AT&T states that the allegations in paragraph 47 amount to legal conclusions to which no answer is required.

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[3] AT&T assumes by way of its answer to paragraph 43 that Plaintiff intended to incorporate by reference its paragraphs 1-42, rather than "paragraphs 1-46 above".

[4] AT&T assumes by way of its answer to paragraph 46 that Plaintiff intended to incorporate by reference its paragraphs 1-45, rather than "paragraphs 1-48 above".

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2006, a copy of AT&T's Answer was filed electronically with the Clerk of the Court to be served by operation of the Clerk's electronic filing system upon the following:

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